(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. No.....4714...../2005

PETITIONER

Jitendra Nath Tiwari
Aged about 21 Years
S/O Shri Shriramprata Tiwari R/O
Masjid Road, Near Gorkha Tailor, Kota,
Raipur
District Raipur (Chhattisgarh)

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through the Secretary
Department of Health, Medical Education
& Family Welfare D.K.S. Bhawan,
Mantralaya, Raipur (Chhattisgarh)

2. Director
Medical Education
D.K.S. Bhawan, Mantralaya
Raipur (Chhattisgarh)

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24/9/05
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3. Dean
Medical College, Raipur (Chhattisgarh)

4. Dean
Chhattisgarh Institute of Medical Sciences
(CIMS) Bilaspur (Chhattisgarh)

24/9/05

5. Guru Ghasidas Vishwavidyalaya through
the Vice Chancellor Bilaspur
(Chhattisgarh)

(2)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS TO MANDAMUS AND CERTIORARI AND FOR OTHER SUITABLE WRITS AND DIRECTIONS:-

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4714/ ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	28-9-2005 Mr. Rahul Jha & Mr. Jitendra Pali, Advocates for the petitioner. Mr. Sandeep Dubey, Govt. Advocate for the State/respondents No.1 to 3. Mr. Manindra Shrivastava, Senior Advocate with Mr. Amrito Das, Advocate for respondents No.4 & 5. Mr. A.K. Bhoite, Associate Professor (Pharmacology), Medical College, Raipur, and Officer-in-charge of the case is also present in the Court. So far no return has been filed on behalf of the State/ respondents. Notices were issued on 26-9-2005. As the last date of admission in Medical Colleges is fast approaching i.e. 30th September, 2005, therefore, counsel for the parties were heard finally. The case of the petitioner is that he appeared in Pre Medical Test conducted by the respondent State for the academic session 2005-06 and the petitioner was placed in the merit list at Sl.No.4 in handicapped class candidates. The candidate placed at Sl.No.1 in the handicapped class namely, Samitraj Prasad has been admitted in a medical college outside the State. The candidate placed at Sl.No.2 namely, Manpreet Singh Gurudatta, S/o Manjeet Singh has already been admitted in Jawaharlal Nehru Medical College, Raipur, where the petitioner is	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

seeking admission. The candidate who was placed at Sl.No.3 namely, Miss Hemu Tandon has been admitted in the Chhattisgarh Institute of Medical Sciences, Bilaspur against the handicapped class quota. The petitioner, being placed at Sl.No.4, is entitled for admission against the disabled/handicapped class quota.

I have heard learned counsel for the parties.

Mr. Jha, learned counsel for the petitioner argued that against one seat of handicapped/disabled quota from the unreserved category, Manpreet Singh Gurudatta, S/o Manjeet Singh, a handicapped candidate, has been given admission who was at Sl.No.2 in the merit list, and one candidate namely Miss Sangeeta has been given admission against handicapped/disabled quota as ST candidate. So far as the third seat is concerned, that is still lying vacant. Therefore, the petitioner is entitled for the said admission. Learned counsel further submitted that three seats of Central Pool quota have been reverted and so far the Central Government has not nominated any candidate of SC or OBC disabled/handicapped against those three seats.

In view of the spirit behind the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act, 1995'), and particularly Section 39

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the Act, 1995, it is the duty of every Government institution to reserve not less than 3% seats for the disabled/handicapped candidates.

Total seats of the Jawaharlal Nehru Medical College, Raipur, are 100, out of which 82 seats are to be filled by the State and three seats of Central Pool have been reverted back thereby, the respondent Jawaharlal Nehru Medical College, Raipur, is required to fill up 85 seats. Even otherwise, total seats of the Medical College, Raipur are 100. Even if 15% seats are to be filled up by the All India Quota, those seats cannot be set apart for the purpose of Section 39 of the Act, 1995. Three per cent reservation for disabled candidates has to be made 3% of the total seats of the college, looking to the spirit of Section 39 of the Act, 1995. Therefore, the respondents ought to have admitted three students from the disabled/handicapped quota and particularly when the candidate of SC or OBC is not available in that case, the third seat must have been allotted to the petitioner.

On the other hand, Mr. Dubey, learned Govt. Advocate appearing for the State/respondents No.1 to 3 argued that only 82 seats are available to the State Government and 3% of 82 comes to 2 seats, therefore, the third candidate cannot be admitted. He further argued that the petitioner comes from general category and one Mr. Manpreet Singh Gurudatta has already been given admission against the disabled

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

quota in general category, therefore the petitioner is not entitled for admission.

Having heard learned counsel for the parties, I have perused the record. Section 39 of the Act, 1995, which provides reservation for disabled persons envisages that

> **"All educational institutions to reserve seats for persons with disabilities.**—All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for persons with disabilities."

The object behind bringing this legislation was the proclamation made at the meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 at Beijing from 1st to 15th December, 1992. It has been made clear to adopt the resolution of the said meeting, the proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. In order to implement the said proclamation the Act, 1995, has been enacted.

Reading of Section 39 of the Act, 1995, makes it clear that not less than 3% seats are to be reserved in Government educational institutions for the persons with disabilities. In this provision, it has not been mentioned that the reservation has to be made looking to the category of candidates. However, in order to fulfill and meet the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

requirement of Section 39 of the Act, 1995, the State Government of Chhattisgarh while prescribing the procedure for admission to the Jawaharlal Nehru Medical College, Raipur, and CIMS, Bilaspur, a specific provision was made that looking to the number of seats this reservation will be in horizontal for each category and accordingly, one seat each was reserved for unreserved category and ST.

In the brochure, only one seat has been shown to be reserved for unreserved category and other two seats have not been reserved for any other category. Whereas, the amended provision of sub-rule (5) of Rule 4 of the Admission Rules envisages that in all categories of seats, which are to be filled through competitive examination, there shall be 3% reservation for Sainik class, freedom fighter class, and disabled/handicapped class. As 82 seats were available for admission by the State Government and remaining 3 seats were reserved for Central Pool quota, and so far, the Central Government has not nominated any person against those seats, therefore, total 85 seats are to be filled by the Jawaharlal Nehru Medical College, Raipur, as such, in view of the provisions of Section 39 of the Act, 1995, the respondents are required to fill up at least 3 seats from disabled class candidates. As per the information given, one candidate from unreserved category i.e. Manpreet Singh Gurudatta has already been admitted and one candidate Kum.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sangeeta has been admitted from ST category, and the third seat is lying vacant, as no candidate from SC & OBC category is available. Even no reservation for SC and disabled/handicapped class candidates has been made. Admittedly, the petitioner is from disabled/handicapped class, therefore, being a third candidate of the disabled/handicapped class and looking to the spirit of Section 39 of the Act, 1995, the petitioner is entitled for admission.

In the result, the writ petition is allowed and the respondents are directed to consider the case of the petitioner for admission to the M.B.B.S. course in Raipur Medical College against the disabled/ handicapped quota.

Before parting with this order, I would like to observe that till the arguments were concluded the Officer-in-charge of the State/ respondents or the Government Advocate has not stated that three seats which have been reverted from the Central Pool have been filled up. During dictation of this order, it was informed that these three seats are filled up. But the admission in Medical Colleges are open till 30th September, 2005, as per the Apex Court order, and the admissions made after filing of this writ petition with the knowledge of the respondents are subject to the decision of this Court. Therefore, even if any admission is made, it shall not affect the case of the petitioner

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक व आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	and the respondents are directed to consider the case of the petitioner for admission against the third seat of disabled quota. In view of this order, M.(W.)P.No.3819/2005 & I.A.No.8427/2005 stand disposed of. Parties are entitled for certified copy of this order. **Sd/-** **L.C. Bhadoo** **Judge**	

Soma

29.9.05 29/6/07 30/4/10 2/9/11 30.6.14